

Message Text

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PAGE 01 BONN 08293 241705Z

51

ACTION EUR-25

INFO OCT-01 ISO-00 EURE-00 CIAE-00 DODE-00 PM-07 H-03

INR-10 L-03 NSAE-00 NSC-07 PA-04 RSC-01 PRS-01 SP-03

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P R 241643Z MAY 74

FM AMEMBASSY BONN

TO SECSTATE WASHDC PRIORITY 2768

USMISSION BERLIN PRIORITY

INFO AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

C O N F I D E N T I A L BONN 08293

E.O. 11652: GDS

TAGS: PGOV, WB, GE, GW

SUBJECT: BRUECKMANN CASE

REF: (A) STATE 106568; (B) BERLIN 841; (C) BONN 7977

1. AT MAY 24 TRIPARTITE MEETING, ALLIED REPS AGREED AD REF ON IMPROVED TEXT OF CERTIFICATE FOR RECOMMENDATION TO AUTHORITIES. PARAS A AND B ARE AS REFTEL C, NEW PARA C IS GIVEN BELOW. U.S. REP MADE STRONG PRESENTATION FOR LANGUAGE SUGGESTED REFTEL A, BUT WITHOUT SUCCESS. OTHER REPS PREFERRED LANGUAGE GIVEN BELOW AS SOMEWHAT SIMPLER AND MORE PRECISE. THEY ALSO HELD THAT SUGGESTED LANGUAGE ONLY REPEATED WHAT WAS CONTAINED IN DOCUMENTS WHICH WOULD BE ATTACHED AND, THAT SINCE CONSTITUTIONALITY IN ITSELF NOT THE ISSUE IN BRUECKMANN CASE, THEY WOULD PREFER LANGUAGE FINALLY AGREED AD REF.

2. PARA C BEGIN TEXT:

THE TERMS OF BK/O(52)35 WERE NOT LIMITED TO THE TAKING OVER BY THE BERLIN LEGISLATURE OF THE FEDERAL LAW
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PAGE 02 BONN 08293 241705Z

OF 12 MARCH 1951 ON THE FEDERAL CONSTITUTIONAL COURT, BUT

WERE INTENDED, AS INDICATED IN THE ALLIED KOMMANDATURA DIRECTIVES BK/L(67)10 OF 24 MAY 1967 AND BK/L(74)9 OF 12 MARCH 1974 (CERTIFIED COPIES OF WHICH ARE ATTACHED TO THE PRESENT DETERMINATION), TO COVER ALSO THE EXERCISE OF JUDICIAL AUTHORITY IN RELATION TO BERLIN UNDER THE PROVISIONS OF THE SAID LAW. IT FOLLOWS THAT THE FEDERAL CONSTITUTIONAL COURT CANNOT BE REGARDED AS HAVING JURISDICTION IN RELATION TO BERLIN. IN ANY CASE SUCH AS THE PRESENT, IT REMAINS THE RESPONSIBILITY SOLELY OF THE COMPETENT BERLIN COURTS UNDER THE RELEVANT LEGISLATION IN FORCE IN BERLIN TO DECIDE WHETHER THERE EXISTS LEGALLY SUFFICIENT GROUNDS FOR REOPENING EARLIER JUDICIAL DECISIONS. IN THE EXERCISE OF THIS RESPONSIBILITY IN THE CASE OF THE APPLICATION AT PRESENT BEFORE

THE KAMMERGERICHT RECOURSE MAY NOT BE HAD TO THE JUDGMENT OF THE FEDERAL CONSTITUTIONAL COURT OF 27 MARCH 1974. END TEXT.

RECOMMEND DEPARTMENT APPROVE THIS TEXT.

3. FOR CONTINGENCY PURPOSES, EMBASSY WOULD DEEPLY

APPRECIATE USBER OUTLINING POSSIBLE RESPECTIVE COMPETENCIES OF KAMMERGERICHT, BERLIN ADMINISTRATIVE AND EXECUTIVE AUTHORITIES (INCLUDING SENAT, MAYOR, ETC.), AND OF ALLIES REGARDING AFFECTING ULTIMATE DISPOSITION OF BRUECKMANN CASE.
HILLENBRAND

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